

Southwest/West Central Service Cooperative Summary of E-rate Appeals

Presented to
Commissioner Michael J. Copps
October 6, 2011

- Southwest/West Central Service Cooperative (SW/WC) is an organization created by Minnesota law to benefit member school districts by purchasing goods and services in bulk and passing savings on to member school districts. SW/WC serves more than 50,000 students educated by its 56 member public school districts and 22 non-public and charter school members
- In 2005, SW/WC sought to fill a need for internet connectivity by soliciting bids for Internet/WAN on behalf of 33 of its member school districts. This number was reduced to 31 by the end of the contract as a result of district consolidations. Throughout the term of this contract the WAN and Internet Services proved essential for the education of approximately 19,000 students in Southwest Minnesota.
- Trillion Partners, Inc. (Trillion) was the successful bidder to SW/WC RFP dated 12/21/05; Service Agreement was signed January, 2006 and extends over E-rate funding years 2006, 2007, 2008, 2009 and 2010. This WAN is the only major source for broadband to the schools in SW/WC's service area, providing 100 Mbps to shared resources between the districts including online and Interactive Television Courses; in addition, each school can utilize up to 15 Mbps Internet Access over a shared 90 Mbps resource. Prior to the WAN being in place, the fastest service available to most school districts was 1.5 Mbps.
- Trillion demanded amendments to the Service Agreement. At the time, Trillion was in trouble but SW/WC had no knowledge of that. The amendments eliminated provisions in the contract that required SW/WC to pay only the "After E-Rate" portion of the service price, whether or not E-Rate funding was actually received. SW/WC is now forced to bear the full loss of E-Rate funding.
- In September 2009, USAC alleged improper gratuities/gifts provided by Trillion to SW/WC totaling \$2,851.27; largest proportion of this amount related to reimbursement of SW/WC expenses for speaking engagement at conference sponsored by Trillion. Some of the items identified by USAC were actually made up, in part, of expenses improperly allocated to SW/WC in Trillion's accounting system. USAC alleges a "failure to conduct a fair and open bidding process free from conflict of interest" despite the fact that the conference actually occurred long after the bidding process was completed and the reality that Trillion won the bid based primarily on the fact that it offered the lowest price for the services.
- USAC denied E-rate funding of \$2.32 million dollars for 2009 and 2010 and has notified SW/WC that an additional \$1.37 million dollars may be reclaimed for E-rate amounts paid for 2006, 2007 and 2008. SW/WC is at risk for a total amount of \$3.69 million dollars.
- SW/WC prepared and submitted its own appeals to USAC. Upon denial of the appeals, further appeal was made to the FCC. The appeals are pending¹ SW/WC has consistently asserted that the value of any gifts or gratuities was insignificant and not a factor in evaluating the proposals from WAN service providers.

- SW/WC retained local legal counsel to review the Service Agreement, as amended. SW/WC initiated a second RFP process in December 2010 for a new WAN Services Agreement. SW/WC retained legal counsel throughout the 2010-2011 RFP process to ensure fair and open bidding and to impose controls that may have been lacking in the 2005 RFP process.
- SW/WC's position that the alleged gifts were inconsequential to the 2005-2006 RFP decision is supported by the results of SW/WC's 2010-2011 RFP process. The USAC rules have fulfilled their purpose. Trillion's proposed price, connectivity and service solutions for WAN services to SW/WC's member districts are far superior to that proposed by any other bidder.
- The political climate within the time frame subject to the audit targeted fraud and abuse with the intention of penalizing the abusers. SW/WC respects the rules; however, when applied to the current situation, absurd and unintended consequences result:
 - Poor, rural Minnesota School Districts suffer the loss of E-rate funding and risk reclamation of amounts totaling \$3.69 million dollars;
 - SW/WC may have no ability to recover reclaimed amounts from Trillion;
 - Member School Districts have no ability to bridge the funding gap
 - Member School Districts lose Broadband services and connectivity to the Internet;
 - The next best connection solution is more expensive, less reliable, and is slower- a step backward
 - Connectivity does not happen without E-rate funding.
- SW/WC is a success story for what E-rate can do; it should not be viewed as an example of mis-spent funds.
- Denial and reclamation of E-Rate funding would be severely detrimental to SW/WC's member school districts, causing a hardship disproportionate to any alleged undue influence resulting from any improper expenditures by Trillion.
- We understand and support USAC's efforts to root out waste, fraud, and abuse in the Universal Service program. In this case, however, it appears that USAC has retroactively applied rules that were intended to only be applied prospectively. The spirit and the letter of rules that were in place at the time were met. Furthermore, USAC's interpretation and application of the rules serves neither the interests of the program as a whole nor the public interest.
- Mr. Commissioner, how should we handle this before the FCC? We need your advice to protect and preserve E-rate funding for our member School Districts and the 50,000 students of southwestern Minnesota. We would be more than pleased to have more time to discuss this matter with you or your fellow Commissioners in Washington DC if you deem it appropriate.
- Thank you.

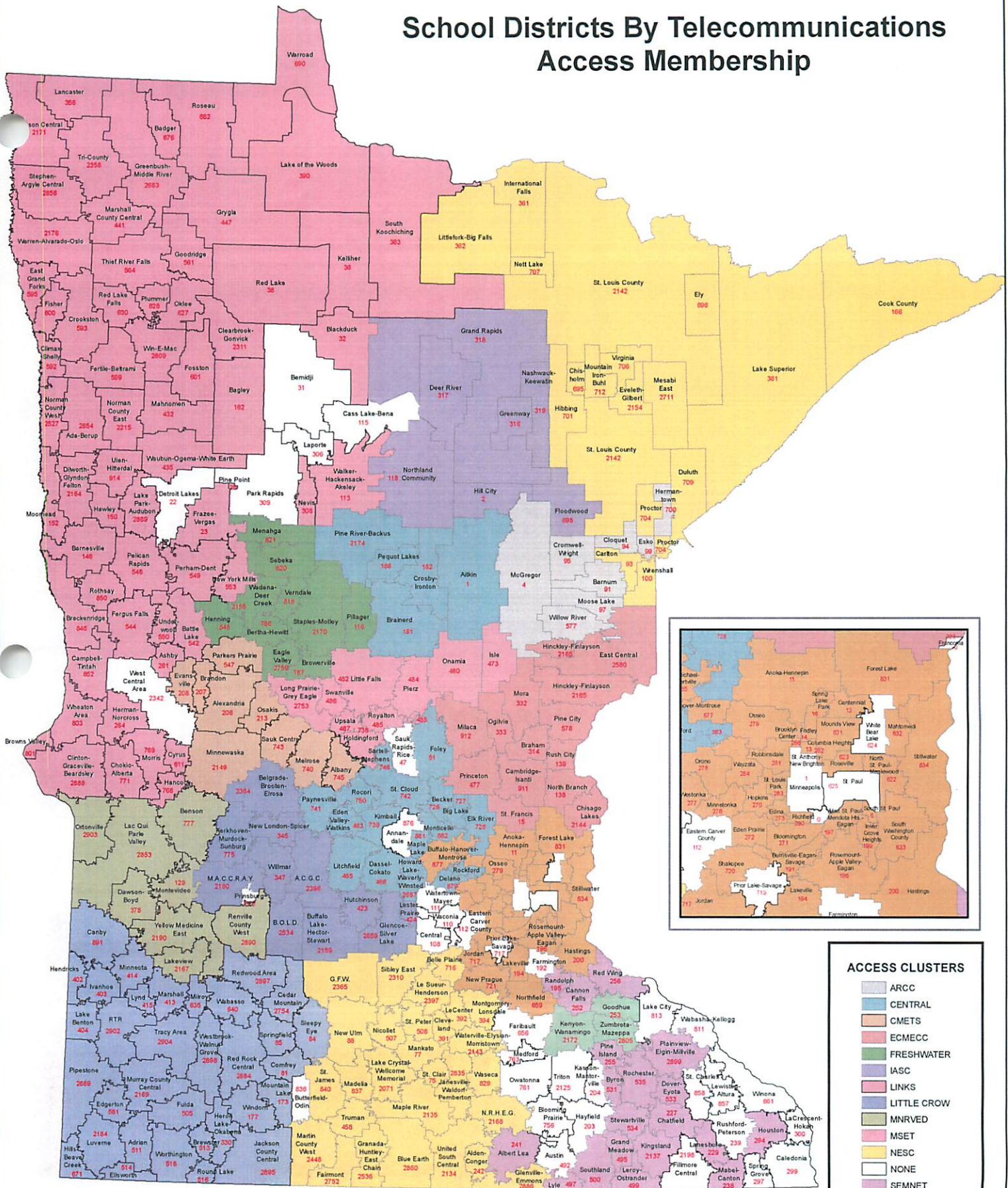
Southwest/West Central Service Cooperative

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¹ CC Docket No. 96-45; CC Docket No. 02-6. The appeal affects the following Funding Request Numbers:

| Funding Year | Funding Request Number | Procurement Phase |
|--------------|------------------------|-------------------------------------|
| 2006 | 1428042 | WAN Procurement |
| 2006 | 1428122 | WAN Procurement |
| 2007 | 1554027 | WAN Procurement |
| 2007 | 1554041 | WAN Procurement |
| 2008 | 1666544 | WAN Procurement |
| 2008 | 1683953 | Jackson County Procurement |
| 2008 | 1666538 | WAN Procurement |
| 2009 | 1897509 | Additional Connectivity Procurement |
| 2009 | 1810845 | WAN Procurement |
| 2009 | 1810843 | WAN Procurement |
| 2009 | 1811052 | Jackson County Procurement |
| 2010 | 2012807 | WAN Procurement |
| 2010 | 2012857 | Jackson County Procurement |
| 2010 | 2035509 | Additional Connectivity Procurement |
| 2010 | 2012828 | WAN Procurement |

School Districts By Telecommunications Access Membership



SOURCE: This map is generated from Telecommunications access cluster membership reporting from school districts as part of the state Telecommunications/Internet Access Equity Aid Program





Wide Area Network
Member Districts

